

DIVISION CIRCULAR #32

DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: April 5, 1998

DATE ISSUED: March 6, 1998

(Rescinds Division Circular #32, "Authorization for Medical Treatment", issued February 28, 1994)

- I. **TITLE:** Authorization for Medical Treatment
- II. **PURPOSE:** To establish policies for the authorization of medical treatment in an expeditious manner when consent is requested.
- III. **SCOPE:** This circular applies to Division components as well as agencies under contract with or regulated by the Division.

IV. POLICIES:

Where an individual is a minor and no guardian is available or is an adult who is believed to be in need of guardianship and no guardian has been appointed, the Division shall seek to have a guardian appointed as soon as possible.

Once a special medical guardian has been appointed, staff shall proceed to obtain general guardianship as soon as possible.

V. GENERAL STANDARDS

- A. **Definitions** - For the purpose of this circular, the following terms shall have the meanings defined herein:

Administrative Head of the Component - means Chief Executive Officer of a developmental center or the Regional Administrator of a regional office of Community Services.

Affiant - means the person completing the affidavit.

Chief Executive Officer (CEO) means the person with administrative authority over a developmental center.

Grave Medical Emergency - means a situation in which a licensed physician or dentist certifies, in writing, that an individual requires immediate surgical intervention or other medical treatment in order to prevent the death of or serious consequences to the incapacitated adult or minor.

Incapacitated Person - means an adult who has been adjudicated incapacitated by a court.

Informed Consent - Refer to Division Circular #41.

Minor - means an individual under 18 years of age.

Regional Administrator - means the person having administrative authority over a regional office of Community Services. The regional office has responsibility for persons placed out-of-state by the Division.

Special Medical Guardian - means a person or the Bureau of Guardianship Services (BGS) appointed by the court when two psychiatrists conclude that a person appears to be incapacitated with respect to providing informed consent to medical treatment and a physician attests that the prompt rendering of medical treatment is necessary in order to deal with a substantial threat to the individual's life or health.

Urgent Medical Need - means medical intervention is needed as soon as possible but within no more than 4 weeks.

- B.** There may be life and death situations when consent cannot be obtained without risk to the life of the individual. In such instances, the decision to proceed with the medical treatment is made by the treating physician.

- C. In instances where a guardian exists (including a natural or adoptive parent of a minor) and that guardian will not be available, staff shall encourage the guardian to delegate guardianship by power of attorney to a competent family member, friend, BGS staff or other interested party in order to assure the availability of a guardian. Delegation of guardianship shall terminate upon revocation by the guardian or death of the guardian. A copy of that document shall be included in the client record.

VI. **PROCEDURES:**

- A. Except as otherwise noted in this circular, informed consent for medical treatment shall be obtained from the individual, if a competent adult, or the guardian of a minor or incapacitated adult.

- B. Special Authority of the CEO or Regional Administrator

If consent cannot be obtained routinely, a CEO or Regional Administrator may grant written informed consent for a minor or incapacitated adult in the following situations:

1. A licensed physician or dentist certifies that the treatment to be performed is essential and beneficial to the general health and welfare of the person, and will improve his opportunity for recovery, prolong or save his/her life, and either:
 - a. the parent or guardian is not accessible to give consent for treatment , or
 - b. the parent or guardian after notice and a request for consent for treatment by a fixed date of not less than 10 days later, refuses or neglects to respond. OR;
2. A grave emergency is certified, in writing, by a licensed physician or dentist and the maximum advance notice possible under the circumstances has been given to the parent or guardian.

- C. In All Other Circumstances

1. When the individual is believed to be incapacitated but there is no guardian, and treatment must be rendered immediately, i.e., no later than within one week, the administrative head of the component shall immediately notify the Chief, Bureau of Guardianship Services (BGS) by telephone. The Chief, BGS, shall immediately contact the Attorney General's Office by telephone for directions on appropriate processing of

the action which ordinarily will involve a petition for appointment of a Special Medical Guardian.

2. When the individual is believed to be incapacitated but there is no guardian, and treatment is required, the administrative head of the component shall immediately notify the Chief, BGS, by telephone. The administrative head of the component shall forward documentation to the Chief, BGS, or his or her designee.
 - a. An expedited guardianship will be scheduled on the basis of the medical urgency.
 - b. The usual elements of a DDD guardianship pleading will be prepared with the addition of a certification from the treating physician detailing the nature of the medical conditions, the proposed treatment and the reason(s) for urgency.
 - c. The affidavit of the physician shall contain comprehensive, accurate and detailed information regarding the individual's medical condition and the treatment required. At the minimum, the affidavit shall provide the date of examination, the result of the examination, diagnosis, prognosis, medical treatment indicated and why the prompt rendering of medical treatment is necessary.

_____/s/_____
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Director